

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Retail Service Systems, Inc., :  
 :  
Plaintiff : Civil Action 2:13-cv-00994  
 :  
v. : Judge Smith  
 :  
Carolina Bedding Direct, LLC, *et al.*, : Magistrate Judge Abel  
 :  
Defendants :

**Discovery Dispute Conference Order**

On April 28, 2014, counsel for the parties participated in a telephone discovery dispute conference with the Magistrate Judge.

Defendant's April 21, 2014 motion for discovery on an expedited basis (doc. 60).

Defendant Carolina Bedding Direct, LLC, a dissolved North Carolina entity, asks the court to permit it to conduct discovery regarding whether Organ Cole LLP or the named partners of the law firm have a proprietary interest in the cause of action or subject matter of this litigation. Darren Conrad asserts in his April 7, 2014 declaration that he met with Retail Service Systems, Inc.'s ("RSS") principal C. Scott Andrew on February 15, 2014 in Atlanta, Georgia to discuss this litigation. (Conrad Decl., ¶ 1, Doc. 60-5, PageID 1976.) During that meeting

3. Mr. Andrew explained to me that RSS did not have to pay any legal fees in litigation because its attorneys, Shawn Organ and Doug Cole owned at least a twenty percent interest in RSS. Mr. Andrew told me that Mr. Organ and Mr. Cole will benefit personally through their ownership interest in anything obtained through litigation. Accordingly, they are not charging RSS attorneys fees for their work as counsel.

4. Mr. Andrew told me that Mr. Organ and Mr. Cole held their ownership interests in RSS, Inc. through a limited liability company that they each own 50% of. I had recalled Mr. Andrew telling me that the LLC was called "RC Retail Services," but based on my review of Articles of Organization filed with the Ohio Secretary of State, I understand that Mr. Organ in fact formed "OC Retail Services, LLC" in June 2013.

(*Id.*, ¶¶ 3 and 4, PageID 1977.) Defendant maintains that if plaintiff's counsel own 20% of RSS, under Rule 1.8(i), Ohio Rules of Professional Conduct<sup>1</sup>, they have a proprietary interest in this litigation that would require them to withdraw as RSS's counsel. Further, if plaintiff's counsel are owners of an interest in RSS, the attorneys'-eyes-only provision of the protective order would be rendered ineffective. RSS has refused to answer an interrogatory about who owns it.

It is ORDERED that RSS respond to the motion by Rule. If plaintiff wants to take Darren Conrad's deposition, defendant is ORDERED to make him available for a deposition limited to the facts asserted in his April 7 declaration.

Defendant's April 7, 2014 motion for a protective order limiting the scope of plaintiff's noticed Rule 30(b)(6) deposition of defendant (doc. 52). Once plaintiff responds to the motion, I will promptly rule on it. I do want to emphasize that although

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<sup>1</sup>(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may do either of the following:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses;
- (2) contract with a client for a reasonable contingent fee in a civil case.

discovery is now focused on plaintiffs' motions for default judgment, I have never limited its right to take merits discovery. However, any merits discovery directed to the defendants' who are contesting personal jurisdiction must be conducted by Rule 45 subpoena, not as party discovery.

s/Mark R. Abel  
United States Magistrate Judge